THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.12375 of 1998
Dated:05-04-2007

Between:
The Depot Manager, APSRTC,
Zaheerabad Depot, Medak District,
Medak.

Petitioner

And

S.Allabakshmi and another

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.12375 of 1998

ORDER:

1. The Depot Manager, APSRTC, Zaheerabad had filed this writ petition questioning the correctness of the Award passed by the Labour Court-II, Hyderabad, in I.D.No.93 of 1994.

2. The first respondent was conducting a route bus on 01-09-1991 from Zaheerabad to Chinchoti and the said bus was subjected to check at Stage No.3/4 and the checking officials have found certain cash and ticket irregularities committed by the first respondent conductor. Based thereon a charge sheet comprising of two charges has been drawn on 09-09-1991 enumerating the following charges.

1) "For having issued the tickets No.187/098526 to 527 of Rs.02-25ps denominations and 051/268500 to 508 of Rs.1.50 ps denominations E.3 to three (3) adults and two (2) chargeable children who boarded your bus at Zaheerabad and bound to Mannapur Ex-stage No.1 to 4. You have issued half tickets instead of full tickets to the adult passengers. Hence made you to collect the fare of Rs.1.50 ps from the passengers and obtain TFT No.051/268504 of Rs.1.50 ps E.(1) and confiscated the tickets for office reference, which is misconduct in the terms of regulations 28(vi) (a) of APSRTC Employees (Conduct) Regulations, 1963".

2) "For having issued the ticket Nos.187/098535 to 539 of Rs.2.25 ps denomination (E.5) to the five (5) passengers duly collecting the requisite fare who boarded your bus at Govindapur and bound for Nagadampalli ex-stage no.2/3 to 4/5. But have not accounted the said tickets against the page no.(2) to (4). Hence marked (XX) and confiscated the SR No.8263884 and issued the SR.No. of 1624848, which is misconduct of Regulation 28 (xxxi) and (xxxii) of APSRTC Employees (Conduct) Regulations, 1963".

3. A departmental enquiry was ensured and based upon the findings recorded by the Enquiry Officer, with which the Disciplinary Authority had agreed, the first respondent had been finally removed from service through the proceedings dated 6th April, 1992. The departmental appeal preferred against the removal proceedings had failed and consequently the workman had invoked Section 2- A (2) of the Industrial Disputes Act and instituted I.D.No.93 of 1994 on the file of the Labour Court- II, Hyderabad.

4. The sum and substance of the charges levelled against the first respondent was that he had issued a child ticket duly collecting Rs.1.50 ps as fare instead of issuing an adult ticket for Rs.2.25 ps to one of the passengers who has boarded the bus. At the time of check, though he had issued certain tickets, the same have not been incorporated in the statistical return by the first respondent conductor, thus leaving scope and possibility for their abuse later on. Right from the very inception of these proceedings, the first respondent has been pointing out that one batch of passengers tendered a sum of Rs.10.00 and asked for two adult tickets and three child tickets and accordingly he had collected the fare of Rs.2.25 ps for the adult passengers and Rs.1.50ps for the child passengers and returned the balance one rupee to the head of the batch of passengers who had tendered Rs.10.00. In the process he had erred in judgment as to whether all the three child passengers are really child passengers or at least one of them could have been charged as an adult passenger. Thus, the first respondent conductor had pointed out that due to his error of judgment, he did not charge that particular passenger adult ticket fare treating him to be an adult and on the contrary he had issued a child ticket charging the correct fare for a child passenger namely Rs.1.50ps. Thus this irregularity, if at all the same can be called so, is the result of an error of his judgment in not noticing that one of the three child passengers is in fact, liable to be treated and considered as an adult

passenger and on that basis he is liable to be charged a fare of Rs.2.25 ps as against Rs.1.50 ps collected from him. Though this explanation offered by the first respondent conductor was fair and reasonable apart from being spontaneous and truthful had not been accepted by the Enquiry Officer and Disciplinary Authority as a *bonafide* explanation and therefore they have construed the irregularity committed by the first respondent as proven misconduct.

5. In so far as the second charge is concerned namely, not closing the statistical return by entering therein the last three digits of the ticket numbers, the first respondent had explained that he is in the process of completing the said exercise and hence he had not yet entered the ticket numbers though he happened to issue tickets to the passengers concerned duly collecting correct and appropriate fare from such passengers. While, it is true that the first respondent conductor had issued the tickets to the passengers concerned and had also collected appropriate and correct fare from such passengers but he had not incorporated the last three digits of the ticket numbers in the statistical return. It is obvious that the statistical return is not yet closed completely. Keeping in mind the possibility of an abuse by way of recycling the same tickets, the APSRTC has devised a measure of preventing the same by insisting upon the conductors to enter the last three digits of the ticket numbers in the statistical return at every stage of the journey and then start the Bus. Once the statistical return is completed the possibility of recycling the tickets is completely ruled out. From the material on record, it is evident that the first respondent conductor had issued the correct denomination tickets to the passengers concerned and had also collected the correct fare from such passengers. To that extent there was no irregularity committed by him. But the fact remains that he had not closed the statistical return, which is undoubtedly an irregularity giving scope for manipulation. But the fact remains that the journey of

the bus in question is far beyond the point, when it has been checked. Therefore, the possibility of recycling such tickets, whose last three digit numbers have not been entered in the statistical return is too remote. Therefore, the proven part of the misconduct alleged against the first respondent does not deserve the harsh punishment of removal from service.

6. When once a series of punishments have been notified in the order of their gradation based on their impact, the Disciplinary Authority is required to apply it's mind and construe what would be the appropriate punishment which deserves to meet the proven misconduct. Imposition of a gravely harsh punishment itself indicates preconceived notion of penalizing the offender irrespective of the gravamen of the charges. A proportionate punishment to the proven misdemeanor has got to be imposed and the same becomes feasible and possible only when serious application of mind had been indulged in. Therefore, the Tribunal had come to the conclusion that the proven misconduct against the first respondent is not such a grave one as to warrant or require imposition of the major punishment of removal from service. Thus a minor punishment perhaps which would meet the ends of justice ought to have been imposed by the Disciplinary Authority. As a result of the removal from service, the first respondent had been put to great sufferance for nearly five years period. Taking this, obviously into account and consideration, the Labour Court had ordered for the reinstatement with continuity of service but at the same time denied 75% of the back wages so that the same can amount to imposing punishment for the proven part of the misconduct against the first respondent. In this process, I have not noticed any irrational exercise of discretion vested on the Tribunal specifically under Section 11-A of the Industrial Disputes Act. The Tribunal had assigned good reason as to why it had considered the imposition of the punishment of removal from service as an excessively harsh one. It had therefore

rightly and justifiably ordered for payment of 25% of back wages only with all attendant benefits including continuity of service apart from reinstatement into the service, which would, in all respects meet the ends of justice. I therefore see no reason to interfere with the Award passed by the Labour Court and I dismiss this writ petition as it is found to be without any merit. However, there shall be no order as to costs.

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NOOTY RAMAMOHANA RAO,J

05-04-2007

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